

U.S. Pat. App. No. 10/616,079  
Attorney Docket No. 12745/3  
Amendment dated: December 8, 2005  
Reply to Office Action dated: August 11, 2005

### **REMARKS/ARGUMENTS**

Claims 1 to 36 are pending in this application.

With respect to paragraph two (2) of the Office Action, the specification has been amended to include the application numbers and related information of the co-pending applications, as suggested. No new matter has been added, and approval and entry are respectfully requested.

With respect to paragraph four (4), claims 25-36 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. It is respectfully submitted that these rejections should be withdrawn for the following reasons.

Claims 25 to 36 have been amended to conform to a *Beuregard* style claim. Approval and entry are respectfully requested, and it is therefore respectfully requested that the indefiniteness rejections of claims 25 to 36 be withdrawn.

With respect to paragraph six (6), claims 1 to 36 were rejected under 35 U.S.C. § 103(a) as unpatentable over Fujibayashi US 2003/0131278 in view of "well known features of which Official Notice is hereby taken".

It is respectfully submitted that these rejections should be withdrawn in view of the following.

For a claim to be rejected for obviousness under §103, the prior art must disclose or suggest each feature of the claim and suggest combining the features in the manner contemplated by the claim. *See Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 934 (Fed. Cir. 1990), *cert. denied* 111 S.Ct. 296 (1990); *In re Bond*, 910 F.2d 831, 834 (Fed. Cir. 1990).

The "Fujibayashi" reference refers to a method for remote backup including mirroring data from a primary storage device at a first location to a secondary storage device at a second location, taking a snapshot of the primary storage device and of the secondary storage device, storing the primary storage device snapshot on a first snapshot volume at the first location, and storing the secondary storage device snapshot on a second snapshot volume at a second location. (*See Abstract*).

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It is respectfully submitted that Fujibayashi does not disclose or suggest a method for designating a source set of data as a primary data source. Fujibayashi may refer to the use of a primary storage device and a secondary storage device, but the primary storage device merely stores data generated or used by a local host. The Fujibayashi reference states: Local storage 120 includes a primary storage device 125 for storing data generated and/or used by local host 110. (Paragraph 19, lines 10-12).

Nowhere in Fujibayashi is it in any way disclosed or suggested that the data generated or used by a local host and stored within the primary storage device is designated as a primary data source. Use of the terms "primary" and "secondary" instead merely refers to the relationship between the two storage devices in Fujibayashi. The primary storage device is located closest to the local host and stores the data generated and used by the local host, whereas the secondary storage device is located remotely from the primary storage device and is used primarily to back up the primary storage device. (Paragraph 19, lines 10-14; *see also* Background, paragraphs 2-5).

It is also respectfully submitted that Fujibayashi does not disclose or suggest a method for switching to the physical replica set of data as the primary data source in case the primary data storage medium becomes damaged and switching to the logical replica set of data as the primary data source in case the source data set in the storage device is corrupted. Instead of distinguishing between physical and logical disruptions, Fujibayashi makes no distinction between types of data disruptions and merely concerns restoring data by selecting from various snapshot generations taken of the primary storage device and the secondary storage device. (*see* Paragraphs 8, 10, 24, or 31). In this regard, Fujibayashi states: "To restore data, a user first selects a snapshot generation to use to restore data. In another embodiment of the invention, the engine 200 may automatically select a pre-specified snapshot generation, such as the most recent generation, to use to restore data". (Paragraph 24, lines 1-6).

Thus, when restoring data, Fujibayashi is concerned with choosing which particular snapshot generation to use rather than distinguishing between the type of data disruption, and consequently, which replica set of data to use.

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Moreover, no indication is given in Fujibayashi that it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ logic into the Fujibayashi system for switching to a logical replica set of data in the event of a corrupted source data set. For example, Fujibayashi's system may have switched to a physical replica set of data to replace the corrupted source data set as it would have switched to a logical replica set of data. Thus, one having ordinary skill in the art would not have known to employ logic into the Fujibayashi system to switch to a logical replica set of data as the primary data source if the source data set in the storage device became corrupted.

Thus, it is respectfully submitted that the obviousness rejections of claims 1, 13, and 25 should be withdrawn, since the reference as applied does not disclose all of the features of each of claims 1, 13, and 25, so that these claims are allowable, as are their respective dependent claims 2-12, 14-24, and 26-36.

Accordingly, claims 1 to 36 are allowable.

#### Conclusion

For all the above reasons, it is believed that the objections and rejections have been obviated, and that claims 1 to 36 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, and that the present application issue as early as possible.

Respectfully submitted,

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